

Official Form 420A (Notice of Motion or Objection) (12/16)

United States Bankruptcy Court
Southern District of Ohio Eastern Division

FILED
2022 APR 18 AM 11:45

RICHARD JONES
CLERK OF COURT
U.S. BANKRUPTCY COURT
COLUMBUS, OH

In re _____)
Volunteer Energy Services, INC.)
)
Debtor)
)
Address 790 Windmill Dr., Pickerington, OH 43147)
)
Last four digits of Social Security or Individual Tax-payer Identification)
(ITIN) No(s), (if any): _____)
)
Employer's Tax Identification (EIN) No(s), (if any): _____)
)

Case No. 22-50804

Chapter 11

NOTICE OF ~~[MOTION TO]~~ [OBJECTION TO]

Power Bid Energy _____ has filed papers with the court to [relief sought in motion or objection].

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion] [objection], then on or before _____ you or your attorney must:

4/18/22

[File with the court a written request for a hearing {or, if the court requires a written response, an answer, explaining your position} at:

U.S. Bankruptcy Court Southern District of Ohio
170 North High Street Columbus, Ohio 43215

If you mail your {request}{response} to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also send a copy to:

Thomas Kozak
5055 Enterprise Rd. Ste A
Toledo, OH 43612

[Attend the hearing scheduled to be held on: April 21, 2022 at 1:30 p.m. in Courtroom C
United States Bankruptcy Court, {address}.] 170 North High Street Columbus, Ohio 43215

[Other steps required to oppose a motion or objection under local rule or court order.]

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: 4/14/22

Signature: Thomas Kozak
Name: THOMAS KOZAK
Address: 5055 ENTERPRISE RD.
STE A
TOLEDO, OH 43612

Regarding Case No. 22-50804, Chapter 11 Volunteer Energy Services, Judge C. Kathryn Preston

As owner of Power Bid, I respectfully object to the motion by Volunteer Energy Services (Debtor) to reject the Broker Contract with Thomas Kozak, dba Power Bid Energy Services (Creditor) as described in the March 30, 2022 filing for Bankruptcy while waiving the requirements of Bankruptcy Rule 6006(f)(6)

Quoting on page 5, paragraph 14, of the 3/30/22 filing by Debtor:

“Courts generally will not second guess a debtor’s business judgement concerning the assumption or rejection of an executory contract or unexpired lease unless there is a showing of bad faith or gross abuse of discretion.” (Copy of page attached with highlighting)

While the intent in the filing is to protect the interest of Debtor, it does not preclude any protection for the Creditor under the same conditions.

We respectfully ask the court to consider the following bad faith actions and inactions by Volunteer:

- 1) There was never a good faith effort by Debtor to contact or attempt to resolve any outstanding obligations to Creditor prior to filing on 3/28/22.
- 2) More importantly, Creditor was pressured by Debtor to submit additional executable contracts with end users for the financial benefit of Debtor and with a conscious intent to deprive Creditor (Power Bid) of any and all contractual financial benefit for its efforts. These contracts were submitted and executed within days (including just one business day) prior to filing for Chapter 11. The following is a list of contracts and dates relevant to this claim:

Wrap & Ship	March 25, 2022	3 yr contract
Wisniewski Funeral	March 23, 2022	3 yr contract
Seal Plus	March 17, 2022	3 yr contract
Zavotsky Meats	March 16, 2022	3 yr contract
Toledo Tool& Die	Feb 17, 2022	3 yr contract

It is safe to assume that plans to file Chapter 11 were in motion for weeks prior to 3/28/22. There are other contracts still in effect but not included for which commissions are still owed to Power Bid executed prior to the date relevant in this objection claiming bad faith on the part of Volunteer.

We can only assume that Volunteer who, having filed for reorganization, and also states in that filing, does not intend to sell or transfer consumer contracts and Broker contracts to another entity that would preserve the interests of Power Bid as described in this objection. It is reasonable to assume that these bad faith actions on Volunteer’s part were done consciously and with intent and therefore meets the conditions to ~~deny waiving Bankruptcy Rule 6006(f)(6)~~ which is at the sole discretion of this Court, and for which we respectfully ask of this Court.

As an alternative, to prevent a delay in proceedings, and to prevent any serious harm to Volunteer, Power Bid would be willing to withdraw the motion in lieu of a negotiated reasonable and enforceable settlement that would be acceptable to this Court. Thank you for your consideration in this matter.

Thomas Kozak dba Power Bid Energy Services (419) 250-3568

April 13, 2022

14. ~~Courts generally will not second-guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease unless there is a showing of bad faith or gross abuse of discretion.~~ See *Allied Tech., Inc. v. R.B. Brunemann & Sons, Inc.*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982) (“Court approval of a debtor in possession’s decision . . . should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code, and particularly of 11 U.S.C. § 365.”); see also *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (“A debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim or caprice.”) (citation and internal quotation omitted). “Accordingly, the court should not interfere with or second-guess the debtor’s sound business judgment unless and until evidence is presented that establishes that the debtor’s decision was one taken in bad faith or in gross abuse of its retained business discretion.” *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 849 (Bankr. W.D. Pa. 1987).

15. The “business judgment” test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor’s estate. See *NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) (noting that the “usual test for rejection of an executory contract is simply whether rejection would benefit the estate”), *aff’d*, 465 U.S. 513 (1984). Further, “[s]ection 365 enables the trustee to maximize the value of the debtor’s estate by assuming executory contracts and unexpired leases that benefit the estate and rejecting those that do not.” *L.R.S.C. Co. v. Rickel Home Ctrs., Inc. (In re Rickel Home Ctrs., Inc.)*, 209 F.3d 291, 298 (3d Cir. 2000). Under the business judgment test, the debtor need demonstrate only that the assumption or rejection of the executory contract or unexpired lease will benefit the estate. See *Granada Investments, Inc. v. DWG Corp.*,

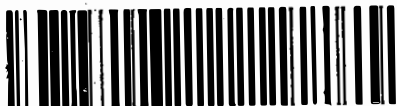
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